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Immigration Law Update

Current Developments in Employment-Based Immigration
By Rosner Partners, L.L.C.

February 2007

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Proposed Fee Increase

As you may have heard on the news, U.S. Citizenship and Immigration Services (USCIS) last week proposed an increase in filing fees averaging 66% over current fees. If the rule goes into effect, fees will raise substantially. For example, the fee for Form I-129, the form used to apply for H-1B and L-1 status, would increase from \$190 to \$320. This would mean that the total filing fee for a new H-1B hire would be \$2320, not including an optional premium processing fee of \$1000.

The fee for Form I-140, the Immigrant Petition, would increase from \$195 to \$475. The fee for Form I-485, the Adjustment of Status application, would increase to a whopping \$905 from the current fee of \$325. USCIS does propose to include applications for advance parole and employment authorization within this new I-485 fee, but there is no denying that the proposed fee increases could be an extreme hardship to many applicants for immigration benefits, and could even influence hiring decisions.

USCIS is heavily promoting this fee increase, using lots of talk about "unit processing activity costs" to justify it to the public. You may obtain a copy of press releases and fact sheets at <http://www.uscis.gov/pressroom>, under "January, 2007." The text of the proposed rule is available at <http://www.regulations.gov/fdmspublic/component/main> (search for Document ID USCIS-2006-0044-0001 in the "Keyword or ID" field).

Comments to the proposed rule are due by April 2, 2007. Some Members of Congress, the American Immigration Lawyers Association and others have expressed strong concerns about the proposed fee increases. Nevertheless, although CIS may reduce some of the increases slightly, we can expect to see fees go up substantially in late spring or early summer. If you are concerned about this issue, we do urge you to consider submitting comments to the proposed rule which explain how the proposed fees may negatively impact your business.

Please contact us if you have any questions about these proposed rules.

Filing H-1B Petitions for FY 2008

The time for filing H-1B petitions for Fiscal Year 2008 is fast approaching. FY2008 begins on October 1, 2007; April 1, 2007 is the earliest that we can file H-1B petitions for October 1 and beyond. As we all know, we have run out of H-1Bs before the start of the fiscal year in the last two years; last year the H-B numbers were exhausted in June. We do not have any indication yet

that Congress will increase the number of H-1B visas available for this or future fiscal years. We strongly recommend that you notify us immediately if you will need an H-1B for a new employee in 2007.

Security Checks: An Increasingly Prevalent Annoyance

All applicants for immigration benefits, including nonimmigrant visas, green cards and naturalization, are subject to security checks before a benefit can be granted. These include fingerprint checks as well as name checks. The latter involves running an applicant's name against databases comprised of law enforcement and government agency information. If the name check turns up a name similar to that of the applicant, visa issuance or green card or naturalization approval can be delayed by weeks, months, or even years while the FBI and other agencies attempt to discern whether the applicant is, in fact, the person named in the database. Generally, it is impossible to predict which cases will be delayed by the name check process, although nationals of certain countries or persons with common names are almost guaranteed to face additional background checks. Unfortunately, in these days of heightened security, it is impossible to expedite name checks, short of filing a mandamus lawsuit in Federal District Court. USCIS is trying to avoid these types of suits by indicating that it will no longer automatically expedite name checks in the event of a mandamus action. Nevertheless, the legal remedy of mandamus may still be an effective course of action when applications are delayed for months and years due to background clearances being "stuck" in name check.

Additional information about the name check process is available at http://www.uscis.gov/files/pressrelease/security_checks_42506.pdf. If you or one of your employees has an application which is being delayed by a name check, please contact us to determine what options, if any, may be available to expedite the process.

Change of Address Online

Last month, USCIS announced that it will accept change of address requests online. Should you need to advise USCIS of an address change go to <https://egov.immigration.gov/crisgwi/go?action=coa>

Please note that applicants for naturalization must still contact USCIS Customer Service by telephone, at least until later in 2007.

For additional information about any of the topics presented here, please **contact us**.

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